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Around the Issue of Convening Meetings of the Sejm

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Słowa kluczowe: zwoływanie posiedzeń Sejmu, Marszałek Sejmu, Sejm

Abstract

This article provides an analysis of selected problems regarding the mechanism for convening sessions of the Sejm by its Marshal. The author criticizes the adopted legal solutions, first of all paying attention to the excessive strengthening of the role of the chairman of the first chamber of parliament in this respect. In his opinion, doubts must be raised by the fact that under the regulations, the right to convene meetings of the Sejm has got only the Marshal, whereas such entities such like parliamentary factions, as well as the President and the government, are formally deprived of it. In addition, he also shows the dilemmas that may arise in the course of applying those provisions in systemic practice. M. in here, he indicates the problem of setting dates of a sitting of the Sejm, inviting guests and the situation when a sitting cannot be convened for objective reasons.

Streszczenie

Wokół problematyki zwoływania posiedzeń Sejmu

Niniejszy artykuł zawiera analizę wybranych zagadnień związanych z problematyką zwoływania posiedzeń Sejmu przez jego Marszałka. Autor krytykuje w nim przyjęte rozwiązania prawne, zwracając uwagę przede wszystkim na nadmierne wzmocnienie w tym za-

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kresie roli przewodniczącego pierwszej izby parlamentu. Jego zdaniem wątpliwości musi budzić fakt, że na gruncie postanowień regulaminowych prawo do skutecznego zwoływania posiedzeń Sejmu ma jedynie Marszałek, a nie dysponują nim podmioty takie jak frakcje parlamentarne, a także Prezydent i rząd. Obok tego wskazuje on również na dylematy jakie mogą się pojawić w toku stosowania rzeczonych przepisów w praktyce ustrojowej. Sygnalizuje on m. in. tutaj problem ustalania terminu posiedzenia Sejmu, zapraszania gości oraz sytuacji, gdy posiedzenie nie może zostać zwołane z przyczyn obiektywnych.

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I.

Convening sessions of the Sejm is undoubtedly one of the key competences determining the functioning of the parliament in the democratic system of the state². Therefore, the method of regulating it under the provisions of applicable law should be considered extremely important. In Poland, in connection with the adoption of the principle of permanence of the parliamentary work (Article 109 (1) of the Constitution)³, the constitution-maker has decided that the entity responsible for convening chamber meetings will be the parliamentary internal body – the Marshal of the Sejm. The exception is only the convening of the first sitting of the Sejm, in which the competence of the President is reserved (Article 109 (2) of the Constitution).

Under the current legislative framework, the legal mechanism for convening meetings of the Sejm is governed by the provisions of the Rules of Procedure of the Sejm. As required by Article 10 (1) of this Act⁴ the power for taking decisions on this matter is conferred to the Marschal, who is not left – no less importantly – to act freely but has to cooperate with two other internal organs – the Presidium of the Sejm and the Council of Elders. Both of them have essential impact on the decision-making process, in different ways however. To be exact, the Presidium shall set up general working plan, the so-

² *Leksykon wiedzy politologicznej*, eds. J. Marszałek-Kawa, D. Plecka, Toruń 2018, pp. 544.

³ The Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78, item 483 with ammend.).

⁴ The Rules of Procedure of the Sejm of the Republic of Poland of 30 July 1993 (consolidated text M.P. 2019 item 1028).

called „working weeks” (Art. 12 (1) (2)) as well as dates of the meetings of the Sejm (Art. 173 (1)), whereas the Council of Elders shall give its opinions on these arrangements (*in concreto* on the general plan and the time of meetings – Art. 12 (2) and Art. 16 (1) (2)).

II.

Turning to the analysis of the presented regulations, one should first pay attention to the particularly important role in the process of exercising the discussed competence of the Marshal of the chamber. It is a fact that the Marshal remains the only body authorized to make decisions on convening a sitting of the Sejm and no other entity can replace him in this respect, nor is he able to exert any formal pressure on him. Therefore, one may wonder whether the solution shaped in this way is rational from the point of view of the assumptions of the state’s constitutional system, and whether there are no premises to replace it with an alternative solution providing other entities in the decision-making process. If so, it is worth to go to the trouble and indicate in which direction any changes in existing should regulations go.

In striving to answer the above question, it should be noted at the starting point that the manner of regulating the procedure for convening meetings of the Sejm adopted in the Rules of Procedure of the first chamber is in full compliance with the provisions of the Constitution in force. It can be safely stated that we are dealing here with the regulatory emanation of constitutional provisions providing for a particularly strong role of Marshals as the governing bodies of the chambers⁵ and at the same time with the regulation developing consistently and logically the principle of the permanence of the parliament’s work (Article 109 (1) of the Constitution). However, ascertaining the constitutionality of the indicated solution does not close the discussion on its substantive legitimacy. This discussion is desirable because – it seems – there are reasons why leaving the competence to convene meetings of the first chamber of the parliament solely at the discretion of the Marshal raises far-reaching reservations.

⁵ M. Kudej, *Amendments to the Sejm regulations made on 4 September and 28 October 1997*, “Przegląd Sejmowy” 1998, No. 3, pp. 19–20.

The first reason is related to the fact that the mechanism of convening meetings of the first parliamentary chamber adopted under existing legislation very clearly limits the institutional possibilities of influencing the decision-making process underway by parliamentary factions. The latter may only exercise their right to speak on the schedule of the chamber meetings in the Presidium and the Council of Elders, provided they have their representatives in these bodies, of course. In the absence of representation, even this very modest plane for formulating their own position disappears. In the meantime – which is all too obvious – it is the groups present in the parliament that have a special interest in ensuring that there are statutory measures to effectively request the Marshal to convene a sitting of the Sejm when, in their opinion, the situation arises and the meeting is not included in the timetable determined by the chamber's Presidium. This applies especially to opposition groups which, due to the logic of the majority, is guided in their decisions by the Presidium of the Sejm, as well as in the face of the Speaker of the House by the nominee of the ruling camp, are naturally deprived of real causative power in this respect. Unfortunately, this practice is not changed much in this matter by the parliamentary practice, which has no statutory basis, consisting in submitting by the opposition parliamentary clubs a request to convene an extraordinary meeting of the Sejm. Such an initiative was often taken in individual term of office of the chamber in the past⁶, but

⁶ There are many such cases, e.g. the request of deputies of the Civic Platform club submitted to the Sejm of the 5th term on September 27, 2006 to convene the chamber immediately, on the same day, containing a request to examine a proposal to shorten the parliamentary term. A motion of MPs from the Democratic Left Alliance submitted to the Sejm of the 7th term on December 2, 2011 to convene an additional session of the Sejm on December 12, during which the government would inform about the course of the EU summit and present the thesis on the Polish presidency. A motion of the Law and Justice deputies submitted to the Sejm VII on December 19, 2012, demanding the convening of an extraordinary meeting on December 21, where Prime Minister Donald Tusk would provide information on the alleged surveillance of PiS deputies. A motion of the Law and Justice deputies submitted to the Sejm VII on August 12, 2015 of the term of office regarding convening an extraordinary meeting in relation to the problem of drought. A motion of deputies of the Civic Platform, Modern and Polish People's Party submitted to the Sejm of the 8th term of December 17, 2016 to convene a meeting on 20 December to be a repeat of the previous meeting, which the applicant deemed invalid due to failure to comply with constitutional and regulatory requirements. A request of MPs from the Civic Platform submitted to the Sejm VIII on April 30, 2018 containing a request to con-

it never ended with a positive decision for the applicant. Although the submitted applications were not ignored as unlawful activity and were formally examined by the Presidium and the opinion of the Council of Elders, the efforts made were finished. The interests of the ruling majority have always prevailed as the convening of the meeting at the moment requested by the opposition was inconvenient for the government and required silencing the case before the public rather than giving it resonance as part of parliamentary work. This state of affairs leads to the conclusion that the Marshal's decision-making monopoly formed in the regulations is convenient only for the power camp, while for opposition groups it clearly limits their rights. Here, I think, one can speak of a serious problem in Polish parliamentary life, the removal of which requires the introduction of appropriate legal regulations⁷. This regulation would have to equip parliamentary factions with the right to make a binding proposal setting a date, but also to give them the opportunity to effectively present the items on the agenda to be included in the meeting. This, of course, would entail a modification of the normative solutions regulating the procedure for establishing the chamber's agenda, which in the current legal status confer very broad powers in this matter on the Speaker of the Sejm, leaving parliamentary factions – clubs, circles and groups of at least 15 deputies only to submit non-binding proposals (so-called supplementary motions)⁸ (Article 173 (2–5) of the Rules of Procedure of the Sejm). It would also be good that the right to submit a request to convene a sitting of the Sejm should be subject to temporary regulation so as to prevent any possible attempts to use this institution in an instrumental manner, with the intention

vene an additional secret chamber meeting devoted to the presentation by the Prime Minister and the Minister of Justice and the Prosecutor General of information on actions taken by the government and the prosecutor's office related to the possibility of committing a crime by one of CBA officers. A request of MPs from Platforma Obywatelska submitted to the Sejm VIII on November 14, 2018 to convene an extraordinary meeting of the chamber on November 16 in order to obtain information from the Prime Minister and the Prosecutor General about the scandal around the Polish Financial Supervision Authority and also to adopt a resolution on the establishment of an investigation commission.

⁷ P. Sarnecki, *Functions and structure of the parliament according to the new Constitution, „State and Law”* 1997, No. 11, p. 37; *Demokracja w Polsce po 2015 r.*, ed. D. Plecka, Toruń 2018.

⁸ G. Pastuszko, *Procedure for determining the agenda for meetings of the Sejm of the Republic of Poland*, „Review of Constitutional Law” 2018, No. 5, p. 128.

of provoking parliamentary obstruction⁹. For example, each club could submit a confirmatory application only after 3 months.

The second reason is, in turn, the lack of formal possibilities of influencing the Marshal's decisions by entities which, due to their political functions, are particularly predestined for this, i.e. the President and the Council of Ministers. In the first case, such a move would justify the systemic role of the President as the guardian of the Constitution (Article 126 of the Constitution), as well as the fact that so far, the chamber's regulations have not strengthened the presidential right to speak to the Sejm (Article 140 of the Constitution) by the legally binding request to convene a meeting on a specific date. On the basis of the current legal solutions, it was limited to establishing a rule that the Marshal of the Sejm gives the floor to the President at his request outside the agenda to deliver a message (Article 186 (1) of the Regulations of the Sejm). Formally, therefore, the head of state is not able to make any arrangements, because it is decided by the body responsible for preparing the schedule – the Presidium of the Sejm. In the second case, the justification should be associated with the special interest of the government as a body directly interested in shaping the chamber's work schedule to a certain extent. It is known that if the government does not want to limit itself to passive administration of the state, it must have an impact on the process of adopting laws, including in its temporal dimension. Hence the need to harmonize the government's calendar of activities with the dates of Sejm meetings, which in today's practice is implemented by the custom of allowing the prime minister to ask the chamber's management to set a meeting on a specific date or to convene it in extraordinary mode¹⁰. It seems that although these custom finds full application in parliamentary life, so that the government can always count on favoring its proposal (which is not surprising, as in principle, the government and the chamber's internal management bodies remain in political symbio-

⁹ Such threats are noticed in the literature on the subject: G. Koksanowicz, *Legal model of the leadership of the Sejm in the light of the Constitution of April 2, 1996*, Lublin 2014, p. 106.

¹⁰ These cases occur frequently, but the government's demand is not always communicated bluntly in the media. This situation took place, for example, in the Sejm of the 8th term, when Sejm Deputy Marshal Ryszard Terlecki announced that on December 28, 2018 an additional sitting of the Sejm would be held on the government's request. The application was to be approved by the Presidium of the chamber. In it, the government demanded to prepare only one item on the agenda regarding the draft amendment to the Excise Duty Act.

sis as factors constituting the power camp), but it is worth deciding to introduce a positive regulation in this regard, specifying strictly the appropriate procedure. Such a solution could remove the behind-the-scenes character of today's activities, and at the same time be a complementary part of the provisions granting the right to request the convening of a sitting of the Sejm to the entities mentioned earlier.

III.

A separate problem within this analysis is the way in which the Marshal's competence, referred to here, is implemented. In this respect, it is necessary to emphasize the fact that when convening a meeting of a chamber for a specific date, the Marshal does not act on the basis of discretionary freedom, but is guided by the arrangements made by the Presidium of the Sejm and the Council of Elders (possibly the Sejm itself). The view expressed in the doctrine, but also the *modus operandi* adopted in practice show that it does not matter whether the meeting convened in ordinary or extraordinary mode is involved. In both cases, it is necessary for the Presidium of the Sejm, having consulted the Council of Elders, to decide beforehand on the date and thus give the Marshal specific permission to convene the meeting. One can only argue, although this is a purely academic dilemma (in practice the Marshal and most of the members of the Presidium come from circles of the power camp, which means cooperation between them), to what extent the arrangements made by the Presidium remain binding for the Marshal. It is not clear whether the deadline set in the statutory procedure obliges him to convene the meeting or only gives such a possibility. The linguistic stylization of the art. 173 (1) of the chamber's regulations, expressly stating that "sessions of the Sejm shall be held (and not – may be held – G.P.) within the deadlines set by the Presidium", prompts the first version to be adopted. However, this interpretation is not unambiguous and can be treated as disputable. It should be remembered that when setting the dates of meetings of the Sejm in ordinary mode, the Presidium and the Council of Elders act in advance, as these decisions must correlate with the weeks of meetings they set (Article 173 (1) in conjunction with the Article 16 (1) (2) and Article 12 (a) of the

Sejm Regulations). Meetings are planned in advance in a specific time horizon, hence the natural expectation is that the final decision should consider the need to guarantee a smooth and harmonious course of parliamentary work, also in the context of the Sejm's relations with other state organs. A scheduled meeting usually includes three consecutive days (there are, however, both shorter and longer periods of meetings), although there are no obstacles to the break between the individual days on which the meetings take place. The phenomenon of the so-called "intermittent meetings", consisting in the fact that the actual meeting of Members takes place over several days separated by a certain distance¹¹. Such arrangement of the schedule by the Presidium is fully admissible, but only on condition that it does not abstract from some of the deadlines specified in the Constitution (e.g. deadlines related to the calculation of 14 days, referred to in the Article 154 (1) of the Basic Law). It is rightly noted in the literature on the subject that excessive stretching during individual meetings can sometimes lead to constitutional doubts¹². There are also no contraindications to determining the days of meetings on weekends, especially on Saturdays. This is rarely practiced, but sometimes it happens. Of course, once agreed, the schedule is not final and does not definitively prejudice the planned calendar of meetings. In this respect, the applicable regulations allow for some kind of flexibility, which means that if a political situation in the country requires, then corrections can be made as fast as it is necessary. Such adjustments are entitled to the Presidium of the chamber, which has full discretion here, provided that the appropriate initiative on this matter is presented earlier by the Marshal responsible for presenting the agenda and date of the meeting (Article 13 (1) of the Sejm Rules). However, such corrections are not competent to carry out the Sejm. Its right to set the dates of his own meetings reserved in art. 173 (1) in fine, it seems, does not include the possibility of changing or even canceling the date of the meeting already fixed (and possibly replacing it with a new one). In this situation, we are dealing with an autonomous decision

¹¹ A. Szmyt mentions this: *Managing breaks in the proceedings and adjourning the sitting of the Sejm*, [in:] *Elements of Sejm practice under the Constitution of the Republic of Poland (1997–2007)*, ed. A. Szmyt, Gdańsk 2008, p. 125.

¹² L. Garlicki, *Commentary on Art. 109, note No. 8*, [in:] *Constitution of the Republic of Poland. Commentary*, ed. L. Garlicki, vol. 2, Warsaw 2000, p. 7.

of the chamber allowing only to convene an additional meeting, which was not previously foreseen by the Presidium¹³.

In the event of convening an extraordinary meeting, the role of the Presidium of the Sejm and the Council of Elders, acting pursuant to art. 173 (1) in relation from te art. 16 (1) (2) of the Rules of Procedure of the Sejm, it is only reduced to a one-off assessment of the legitimacy of the proposed discussion and voting on one or more matters. Formally, the initiative in this case belongs to the Marshal of the Sejm, although it is also customary for the application to come from a deputy's club or government. If such a request reaches the Marshal's staff, then it is up to the Marshal whether he will be given the run and will go to the Presidium. In the absence of legal coercion, the Marshal may well ignore the application¹⁴.

It can be thought that it is unacceptable for the Marshal exercising the power to convene the Sejm to make its effectiveness conditional on fulfillment of an additional condition (e.g. the consent of the government expressed in the future). Similarly, it does not seem possible for him to reverse his decision in this case and to conclude that a meeting that has already been convened will not be held. The issued order makes it necessary to conduct a meeting with all consequences arising from this title.

Apart from the necessity to order technical and preparatory activities (e.g. preparation of the meeting room, voting facilities, printing materials, etc.)¹⁵, the Marshal of the chamber convening the meeting is obliged to notify the date and agenda of the meeting of specific entities. From the art. 171 (1) of the Sejm regulations it follows that it does so no later than 7 days before the planned meeting (unless due to particularly justified circumstances this period will be shortened – Article 171 (2) of the Sejm regulations) by sending a notification to: deputies, the President, the Marshal of the Senate, members of the Council of Ministers, First President of the Supreme Court, President of the Constitutional Tribunal, Prosecutor General, President of the Supreme Audit Office, President of the National Bank of Poland, Ombudsman

¹³ Similarly, P. Sarnecki, *Commentary on Art. 173 of the Sejm Rules of Procedure*, [in:] *Commentary to the Sejm Rules of Procedure of the Republic of Poland*, ed. A. Szmyt, Warsaw 2018, p. 812.

¹⁴ G. Kosanowicz, *Legal model...*, p. 106.

¹⁵ P. Czarny, B. Naleziński, *Organ of the Sejm of the Republic of Poland*, Warsaw 2002, p. 40; M. Zubik, *Internal Organization of the Sejm of the Republic of Poland*, Warsaw 2003, pp. 148–149.

and Ombudsman for Children. The doctrine aptly observes that the circle of addressees thus determined does not coincide with the catalog of bodies authorized to participate in meetings of the Sejm pursuant to the art. 170 (2) (3) of the House Rules, as it does not include, among others President of the Supreme Administrative Court, Chairman of the National Council of the Judiciary, President of the National Broadcasting, Council of the Inspector General for Personal Data Protection. Regarding this solution as faulty, the author takes the position that it is necessary to extend the obligation to notify also to these bodies, as well as to all other bodies, if only on the agenda of a particular meeting of the Sejm envisages consideration of the cases they have raised (for example, it considers the Chief Inspector of Work who, according to the Art. 18 (3) of the State Labor Inspection Act¹⁶ shall present to the Sejm annual information, reports and motions pursuant to statutory provisions¹⁷).

IV.

Finally, it should also be mentioned that during certain periods it may not be possible to exercise competence to convene meetings of the Sejm. However, this is not a matter of legal prohibitions arising from applicable regulations – there are no such legends, but objective conditions related to the location of the state at a given moment (e.g. during prolonged street protests under the parliament building, terrorist actions, etc.). One such eventuality is mentioned by the Constitution itself, which, specifying the conditions for the admissibility of issuing ordinances by law by the President, indicates in art. 234 the inability of the Sejm to meet during a martial law meeting. Referring to this provision in the context of interest to us, it should be noted that the constitution-maker does not create a legal prohibition on convening the Sejm (it is not that one cannot convene the Sejm during martial law), but only signals that such a scenario may occur and it is necessary to consider its consequences¹⁸. His intention is therefore to preventively indicate a hypothet-

¹⁶ State Labor Inspection Act of 13 April 2007 (consolidated text Dz.U. 2019 item 1251).

¹⁷ P. Sarnecki, *Commentary on Art. 171 of the Sejm Rules of Procedure*, [in:] *Comment...*, p. 807.

¹⁸ The literature on the subject speaks of the existence of an objective obstacle to the parliament's exercise of the law-making function; S. Patyra, *Acts pursuant to a law in the Polish*

ical situation when, due to the temporary cessation of the Sejm's functioning, it becomes necessary to entrust the exercise of the legislative function to another body, i.e. the President. By the way, it is worth noting that art. 234 does not explicitly determine which entity is entitled to assess whether the circumstances listed therein have actually occurred and whether the condition for issuing regulations with the force of law has been updated in result. It can be assumed that this assessment lies with the government, since it is a body under the discussed regulation that remains entitled to initiate the procedure of issuing such a regulation by the President. Accepting this claim, however, it should be expressed that the optimal situation would be if, as far as possible, the circumstances excluding the meeting of the Sejm would notify the head of state the Marshal. Being an entity responsible for convening chamber meetings, for natural reasons he has the best knowledge of the Sejm's ability to act efficiently.

Given the above considerations, it should be noted that it is not an obstacle for the Sejm to gather when the chamber is in the post-election period, i.e. when the political composition of its successor had already been selected, and that it was still functioning due to the lack of an inter-term break in Polish constitutional law¹⁹. Convening a meeting in such conditions is a *lege artis* activity, fully admissible from the point of view of the constitutional provisions in force. Of course, it should be borne in mind that at the end of the term, the handling of certain matters in the Sejm forum may be either completely pointless (due to the operation of the principle of discontinuation of the work of parliament), or may also cause political controversy (when dealing with, for example, controversial bills by the parliament deprived of democratic legitimacy). However, this does not mean that it excludes the Sejm's

constitutional order. Tradition and the present day, "Przegląd Prawa Konstytucyjnego" 2014, No. 2, p. 265; J. Marszałek-Kawa, *O konieczności zmiany Konstytucji RP z 2 kwietnia 1997 roku. Refleksje wokół toczącej się debaty konstytucyjnej*, [in:] *W kręgu historii, politologii i edukacji. Studia i szkice dedykowane profesorowi Witoldowi Wojdyle*, eds. Z. Karpus, G. Radomski, M. Strzelecki, Toruń 2012, pp. 427–442.

¹⁹ It should be noted that until 2019 there was no practice of convening meetings of the Sejm in such a situation, hence one could speak of the existence of a parliamentary custom in this respect. It was not until the Sejm of the 8th term of office that the pre-election meeting of September 11, 12 and 13, 2019 was suspended and moved to October 15 and 16, 2019, i.e. after the elections (these were held specifically on October 12, 2019).

right to hold a meeting, especially since some items on the agenda may arise from state necessity, conditioned by the political situation in the country, or the provisions of applicable law.

V.

It follows from the above considerations that despite the period of over twenty years of the Constitution of 1997, the procedure for convening meetings of the Sejm still raises numerous doubts. It is clear that when creating the constitution-regulating provisions of this matter, certain shortcomings could not have been avoided. The most striking drawback seems to be depriving of influence on the ongoing decision-making process here factors such as parliamentary factions, especially opposition, as well as the President and the government. There is also a visible lack of legal precision in regulating certain issues and related interpretative dilemmas. All this leads to the conclusion about the need to undergo verification of the regulations once again and perhaps to introduce appropriate corrections.

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